IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5786 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI
and
Hon'ble MR.JUSTICE KUNDAN SINGH

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

BC PATEL

Versus

ASSTT. COMMISSIONER OF INCOME TAX, CIRCLE 6(4)

Appearance:
MR KH KAZI for Petitioner
MR MIHIR JOSHI, for MR MANISH R BHATT
for Respondent No. 1

CORAM : MR.JUSTICE R.K.ABICHANDANI
and
MR.JUSTICE KUNDAN SINGH

Date of decision: 19/12/2000

ORAL JUDGEMENT

(Per : MR.JUSTICE R.K.ABICHANDANI)

During the course of the arguments in this petition, it was noticed that though an application dated

11th August, 1998 was addressed to the Chief Commissioner of Income Tax, Gujarat-III, Ahmedabad, no decision has been taken on that application by the concerned authority. According to the petitioner, in all his returns he has brought to the notice of the Assessing Officer the decision of the Calcutta High Court (180 ITR 86) when he had taken up the stand that the income in question was not required to be included in the total income. It is the petitioner's case that there has not been any suppression and full disclosures were made and the returns came to be accepted by the intimation contemplated under Section 143(1)(a) of the Act. According to the learned Council for petitioner, even in the case of a Judge of Hon'ble the Supreme Court, the Income Tax Tribunal had taken a decision on the same lines on which the Calcutta High Court had decided the matter. The petitioner has taken up through his Chartered Accountant, several contentions in the application dated 11.8.1998. It was also contended that there was no proper application of mind before granting approval under Section 151 of the Act on the question whether there was justification for reopening the assessment. We feel that it would be appropriate for the Chief Commissioner of Income Tax as the controlling authority to apply his mind to the contentions which have been raised by the petitioner and which may be raised within two weeks from today, as indicated by the learned Council, in support of the application dated 11.8.1998 already made, and take a decision in accordance with law thereon, within two months from today. We are issuisng this direction without expressing ourselves on the merits of this case. If the decision goes against the petitioner, it will be open for the petitioner to challenge the same in accordance with law before the appropriate authority. No further proceedings will be taken pursuant to the impugned notices until such decision is taken and if the decision goes against the petitioner, one month thereafter, to enable the petitioner to take recourse to law. Subject to this direction the petition is disposed of. Rule is discharged with no order as to costs. Liberty to the parties to move in this petition in case of any difficulty.

---

*/Mohandas